

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
STATESVILLE DIVISION  
CIVIL DOCKET NO. 5:04CV97-V**

**DORSEY PORTER, JR.,  
Plaintiff,**

**vs.**

**UNIVERSAL TECHNICAL INSTITUTE OF  
NORTH CAROLINA, INC. (f/k/a NASCAR  
Technical Institute, Inc.), and  
UNIVERSAL TECHNICAL INSTITUTE, INC.,  
Defendants.**

**ORDER**

**THIS MATTER** is before the Court on Defendants' Motion To Dismiss Or Stay Pending Arbitration, filed September 15, 2004 (Documents #4 and #5).

On April 14, 2005, the undersigned issued an Order directing Plaintiff to respond or otherwise show cause why dismissal pursuant to Fed. R. Civ. P. 41(b) should not be granted. (Document #10) Pursuant to the Court's April 14, 2005 Order, Plaintiff filed a Response on May 6, 2005. (Document #11) Plaintiff now indicates that "the parties have agreed to proceed with arbitration of the Plaintiff's claims as stated in the pre-employment arbitration agreement" and asserts that dismissal with prejudice is not appropriate. (Plaintiff's Response, ¶¶1, 11) However, Plaintiff failed to take any action to confirm his willingness to submit this dispute to arbitration or commence arbitration proceedings until after this Court directed Plaintiff to show cause.<sup>1</sup> (Plaintiff's Exhibit 1 - 4/27/05 Letter From Plaintiff's Counsel to AAA)

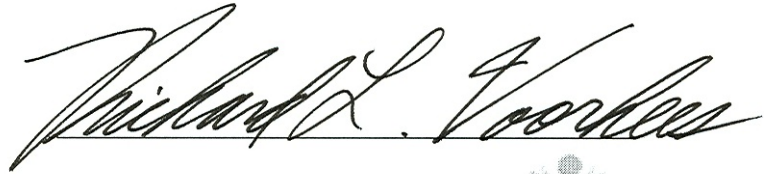
**IT IS, THEREFORE, ORDERED** that this matter is hereby **STAYED** pending arbitration proceedings before the American Arbitration Association.

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<sup>1</sup> Plaintiff's counsel states that Plaintiff elected not to respond in writing "to further judicial economy and not belabor the court." (Plaintiff's Response, ¶9) Counsel's logic is both disingenuous and flawed.

**IT IS FURTHER ORDERED** that Plaintiff **SHALL** notify this Court **IN WRITING** of the outcome of the arbitration proceedings **within 20 days** of any decision or impasse and, in any event, Plaintiff **SHALL** submit a written status report **within 90 days** of the date of this Order or suffer dismissal of this case with prejudice.

**Signed: May 12, 2005**

A handwritten signature in black ink, reading "Richard L. Voorhees". The signature is written in a cursive style with a horizontal line underneath the text.

Richard L. Voorhees  
United States District Judge

